

DEC - 1 1992

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Amendment of Part 97 of the Commission's Rules to Relax Restrictions on the Scope of Permissible Communications in The Amateur Radio Services

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PR Docket No. 92-136
RM-7849
RM-7895
RM-7896

To: The Commission

REPLY COMMENTS OF THE AMERICAN RADIO RELAY LEAGUE, INCORPORATED

The American Radio Relay League, Incorporated (the League), the national non-profit association of amateur radio operators in the United States, by counsel and pursuant to §1.415(c) of the Commission's Rules, hereby respectfully submits its reply comments relative to the Notice of Proposed Rule Making (the Notice), 7 FCC Rcd. 4231 (1992). The Notice proposes to amend the Rules for the Amateur Radio Services by a relief of restrictions on the scope of the permissible communications that amateur stations may transmit. In response to certain of the comments filed in this proceeding,¹ the League states as follows:

1. Since the Notice proposal in this proceeding is essentially verbatim that which was proposed by the League, it is gratifying

¹ As is normally the case, the Commission's public reference room docket files may or may not be complete. The League has reviewed the documents contained in the docket file in this proceeding to date, but it is unclear whether that file contains copies of all comments submitted to and received by the Commission.

that the comments filed are generally supportive of the proposal.² Delineating proper content regulations for amateur radio communications is an extremely difficult task. The League's Board of Directors extensively debated and reviewed the prohibited communications rules, and held numerous discussions with Commission staff³ on the subject, prior to initiating its proposal. The League remains satisfied that the proposed rule, as it appears in the Notice, establishes a good balance between the desirable goal of increased flexibility in the content rules, and the absolute requirement of protecting the Service against encroachment and exploitation by other radio services and those who might commercially benefit from the Service.

2. Most of the comments proposed some sort of "fine tuning" of the proposed rule. Some sought to carve exceptions to the prohibition on communications for the benefit of an employer of the amateur asked to provide certain communications. One comment,⁴ for

² The League notes especially the favorable comments of the Manager of the National Communications System (NCS). NCS notes that "the participation of amateur radio operators in NS/EP (National Security/Emergency Preparedness) related functions has benefitted the nation's NS/EP posture and amendment of the rules as proposed would allow the amateur radio operators to continue to respond in NS/EP situations".

³ The participation of the Chief, Private Radio Bureau, and the Personal Radio Branch staff, in providing information and in assisting the League in developing an historical and conceptual framework for the League's proposal, and the generosity of the PRB staff with its time, is appreciated.

⁴ See, the Comments of D. Douglas Rehman, Communications Coordinator of the Florida Department of Law Enforcement, dated August 10, 1992.

example, noted that where a municipal, state or the Federal government is the employer of an amateur, he or she might be construed to be in violation of the rule merely by providing public service communications which benefit a public safety entity of that municipal, state or the Federal government. While this appears to the League to be a statement of an unnecessarily overbroad concern,⁵ the concern is well taken. The comments seeking to address specific circumstances illustrate the fact that no rule governing the substance of communications in this context can specifically address all combinations of anomalous factual situations with which amateurs may be confronted. It is not useful, however, to attempt to customize the rule to attempt to encompass every factual situation which might arise. Rather, the rule can address such situations only in a general way.

⁵ The prohibition of communications on behalf of an employer should not be assumed to prohibit civil servants from participating in emergency communications or public service communications via amateur radio, unless the civil servant is expected or requested, as an incident of his or her employment at a specific agency, to conduct amateur communications. Voluntary provision of amateur emergency or public service communications, not an incident of the employment relationship, or not as part of the responsibilities of the government agency for which the amateur works, should not be considered to be "on behalf of an employer". The concept of prohibiting communications on behalf of an employer is based on the need to isolate the amateur's participation in amateur communications from the means by which the amateur makes a living. By so doing, the amateur is free from any pressure or obligation to provide communications for an entity because he or she works for that entity. Performing amateur public service communications is as acceptable for a public servant as for anyone else in similar circumstances.

3. The unachievable goal of specificity in a content regulation such as §97.113 is a goal nonetheless sought by a few of the commenters. For example, the comments of Fred Maia in this proceeding suggest that the proposed rule is not workable, as there is no specific definition of "regular basis" contained in the Rule.⁶ There is no specific temporal definition of the "regular" reference in the rules, because it is not intended to delineate a specific course of behavior. It is there to establish that it is not the regular function of amateur radio to conduct swap nets on the air, retransmit the signals of other radio services, or to provide communications constantly as an alternative to the police radio service, for example. Those are permitted, occasional exceptions to general prohibitions, but they are not intended by the Commission to become a routine function of the Service. Mr. Maia's comments seek a degree of rigidity that does not properly belong in content rules for the Amateur Radio Service.

4. The more general concern of Mr. Maia, however, that the Commission provide some guidance in the Report and Order

⁶ Proposed §97.113(a)(2) would permit amateurs to use their stations to notify other amateurs about amateur radio equipment they have for sale or trade, provided that this is not done "on a regular basis". [Note: the current rule limits this practice to those who are not engaged in buying or selling amateur equipment "on a regular basis"; the rule has not been subject to much interpretational difficulty to date]. Proposed §97.113(a)(4) would prohibit communications "on a regular basis" which could be "reasonably" furnished through other radio services. And proposed §97.113(e) would limit the retransmission of communications from U.S. Government stations, such as weather, propagation, and space shuttle transmissions, such that those retransmissions could be done only occasionally, not "on a regular basis", and as an incident of normal amateur radio communications.

implementing the new rules with respect to the application of the "regular basis" references, is well taken. This was expressed well in the comments of the Heart of America Radio Club, Inc.:

We welcome the revised wording in the proposed rules and agree with the concept that amateur radio should be able to provide communication for public events with the provision that such services not be used to replace other means of communication for activities which could reasonably be called "everyday occurrences". We would ask the Commission to consider the addition of wording...that defines what is "on a regular basis". Our fear is that, while the intent of the rule would be to preclude the use of amateur radio to aid organizers of weekly sporting events or the like, the rule could be interpreted in such a way that providing communications for a yearly event would be considered a "regular basis". We believe that yearly or semi-yearly events are the very kind of events the Commission and the amateur community wish to allow even if those events reoccur every year and might be considered "regular".

The League agrees that annual or semi-annual type events are, in many cases, the type of events that the Commission should allow. As an example, the Iditarod dogsled race in Alaska is an annual (and hence, strictly speaking, regular) event, but one in which Amateur Radio has an appropriate role. The long distances involved in the race, its duration, the weather factors, the need to assure the safety of the participants, and the fact that the event occurs only annually are elements which make such an event ideal for the provision of amateur radio public service communications. Some anecdotal discussion in the Report and Order in this proceeding of the intended application of the rule, relative to the "regular basis" references, would assist amateurs in properly exercising the additional flexibility in public service communications facilitated by the rule as proposed.

5. One commenter in the proceeding seeks to revisit an issue twice resolved against it in previous docket proceedings. The National Association of Broadcasters and the Radio-Television News Director's Association (NAB/RTNDA) jointly seek to relax or eliminate the present proscription of use of amateur radio as a newsgathering tool, except in closely circumscribed situations. Neither the argument advanced by NAB/RTNDA, nor their proposed substitute text of the rule governing amateur radio participation in newsgathering efforts of broadcasters, has changed from their prior efforts to achieve the same goal. NAB/RTNDA cannot understand why it is necessary for the rules to limit amateur participation in newsgathering activities to situations involving the immediate safety of human life or the immediate protection of property. They would like amateur radio to be used by journalists [presumably because it is cheaper to do so than to purchase and deploy equipment for the dedicated Part 74 frequencies, specifically allocated for broadcast auxiliary purposes, including Electronic News Gathering (ENG)]⁷ where the communications relate to an

⁷ It is common knowledge that the high costs of maintaining news departments at broadcast stations, both radio and television, have driven some stations to eliminate news departments altogether, and others to cut the budgets of news departments drastically. News directors and general managers are constantly looking for ways to cut costs wherever possible. Use of amateur radio feeds for "important news events," for example, would save a lot of money at broadcast stations. It would allow stations to avoid sending ENG or SNG trucks to the site of events, thus to claim entitlement to use amateur radio at an "important news event" where there is "no other voice communication system available at the place where the information is originated." The proposed NAB/RTNDA rule offers a thin veneer of legitimacy indeed. It is quite obviously an effort to usurp amateur radio frequencies and the services of amateur radio operators for commercial purposes. It is a plan which should

"important news event" and where the information cannot be transmitted by means other than amateur radio because voice systems are disrupted or there is no voice circuit available at the place where the information is originated.

6. Under this test, the "important news event"⁸ can be whatever a broadcaster says it is. And whether or not there is a voice communication circuit available "at the place where the information is originated"⁹ is solely within the control of the news director. As the League noted in Docket 88-139 [See, the Report and Order, 4 FCC Rcd. 4719 (1989)], communications to protect the safety of life or property are fundamentally different from communications used to file news reports. Allowing amateurs to

be scuttled once and for all by the Commission. The present rule, which has served well in connection with a relationship prone to abuse, and which deserves special treatment in the rules, should be preserved.

⁸ Important to whom? There is no indication what that test relates to, or who makes the determination. All news events are important to a news director. That is his or her job. So, presumably, all news events, from traffic tieups to cats in trees, meet that test.

⁹ The "place where the information is originated" need not be the location of the "important news event". The place where the information is transmitted by a broadcaster may be remote from the site of the "important news event." There may, under the NAB/RTNDA test, be ample ENG and SNG facilities available at a particular location where a news story could be originated, but at the location selected by a broadcaster, no such ENG or SNG equipment is on site. Thus, under the NAB/RTNDA test, amateur radio could be used to relay the newscast to the studio because other facilities "are not available" at that location. In other words, whether amateur radio may be used for ENG operations or not is, under the NAB/RTNDA test, solely within the control of the news director, and offers vast opportunities for abuse, and regular, ongoing usurpation of amateur radio facilities.

participate in the latter is a specific instance of involvement in business communications which has a far-ranging potential for abuse. It is analogous to the need to prevent use of amateur radio for regular police communications. In each case, there are specific radio services regularly available for the purpose, and amateur radio need not be subjected to exploitation by those who find it easier or cheaper to use amateur radio.

7. In this connection, the comments of Michael Lonneke are significant. Mr. Lonneke has been a licensed radio amateur since 1963, now holds the Amateur Extra Class license, and in addition is a member of the NAB and is a former member of the Board of Directors of RTNDA and a former news director and broadcast station general manager and vice president. Of the NAB/RTNDA proposal, Mr. Lonneke notes:

Perhaps there has never been a more self-serving idea put forth by the NAB and RTNDA. With news budgets shrinking and smaller news staffs it only goes to reason that stations/networks would look to outside news sources which could be tapped at no expense. Tuning into and retransmitting materials (taken at face value) from the amateur bands would be a lot more cost effective than mounting a full scale effort to field reporters before, during or after disasters.

Who would verify the NAB/RTNDA qualifiers that human life is threatened or that information cannot be transmitted by any other means? Surely not the Broadcast stations and networks! These entities do not operate without pecuniary interest, as amateur stations must...

Finally, on balance there is no damage to the public interest if news organizations continue to rely on presently available news sources. The alternative of turning the amateur bands into 'instant information bands' after any disaster is ill-advised. Such a change would produce amateur stations "broadcasting" details, descriptions and accounts, both solicited and

unsolicited, just for the excitement of possibly (being) part of the evening news.

Lonneke Reply Comments, at 2.

8. The proposed rule is perfectly reasonable with respect to the rare occasions in which amateurs may participate in program production or newsgathering. Information "directly related to the immediate safety of life or protection of property" can be provided where no other means of communication is reasonably available before or at the time of the event. These situations allow amateurs to offer communications which would be directly emergency related, but not otherwise. The League strongly urges that no modification of the rule as proposed be tolerated by the Commission, and that NAB/RTNDA be told once and for all that they may not exploit the Amateur Radio Service frequencies as they have repeatedly sought to do.

9. In sum, the comments filed in this proceeding support the enactment of the proposed restatement of §97.113 of the Rules. The League continues to urge the proposed rules as proposed, and believes that these constitute a proper balance between facilitation of public service communications and protection against exploitation. As the League noted in Docket 88-139:

The Amateur Radio Service requires, on the one hand, flexibility in the regulations, in order to permit the widest range of experimentation and public service and emergency communications. On the other hand, the Service is unique in requiring protection from encroachment by commercial entities which would exploit the Service. The non-commercial nature of Amateur Radio is both unique among the radio services administered by the Commission and beneficial in terms of the public service functions it performs. The Service is akin to the public parks,

requiring protection from exploitation so that the public can use it and benefit from its use.

Id., 4 FCC Rcd. at 4721.

The Commission's recognition of the principles recited above is inherent in the proposals in the instant proceeding, and issuance of a Report and Order implementing the proposed rules at an early date is requested.

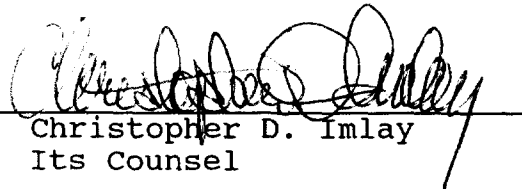
Therefore, the foregoing considered, the American Radio Relay League, Incorporated respectfully requests that the Commission finalize the proposed restated rule as soon as possible.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Margaret A. Ford, Office Manager of the law firm of Booth, Freret & Imlay, do certify that copies of the foregoing REPLY COMMENTS OF THE AMERICAN RADIO RELAY LEAGUE, INCORPORATED were mailed this 1st day of December, 1992 via U. S. Mail, first class, postage prepaid, to the offices of the following:

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